

**IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, SEPTEMBER 1998 SESSION**

FILED December 8, 1998 Cecil Crowson, Jr. Appellate Court Clerk
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WILLIAM E. WALDEN CHANCERY)	BRADLEY
)	
Plaintiff/Appellee)	
)	
V.)	Hon. Earl H. Henley, Chancellor
)	
NEW LIFE MINISTRIES d/b/a NEW LIFE MATERNITY HOME)	
)	
Defendant/Appellant)	No. 03S01-9709-CH-00115

For the Appellant:

Ginger F. Wilson
P.O. Box 1083
Cleveland, Tenn. 37364-1083

For the Appellee:

Roger E. Jenne
P.O. Box 161
Cleveland, Tenn. 37364

MEMORANDUM OPINION

Members of Panel:

Charles D. Susano, Jr., Judge
Roger E. Thayer, Special Judge
John S. McLellan, III, Special Judge

REVERSED and
REMANDED.

THAYER, Special Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The employer, New Life Bible Church, Inc., has perfected this appeal from a ruling of the trial court in awarding the employee, William E. Walden, a judgment in the sum of \$34,187.64 representing a recovery for unpaid medical expenses in the sum of \$33,193.69 and for reimbursement of travel expenses in the sum of \$993.95.

The trial court found plaintiff's claim compensable and fixed an award of permanent partial disability at 50% to his right arm. In addition, the court allowed certain discretionary costs and fixed attorney's fees. On appeal there is no dispute concerning the 50% award, the allowance of discretionary costs or the award of attorney's fees.

The sole issue relates to that portion of the judgment awarding plaintiff a monetary judgment for medical expenses incurred but remaining unpaid at the time of the trial.

Defendant employer argues the judgment should have directed it to pay the various health care providers and it was error to allow the employee to recover same without having paid the medical expenses. In support of this contention, the employer cites and relies on the holdings of the Supreme Court in the case of *Staggs v. National Health Corp.*, 924 S.W.2d 79 (Tenn. 1996); *West Insurance Company v. Montgomery*, 861 S.W.2d 230 (Tenn. 1993) and a Workers' Compensation Appeals Panel decision in the case of *Moody v. Phelps Security, Inc.*, No. 02S01-9509-CV-00080, filed August 30, 1996 at Jackson, and adopted and affirmed by the Supreme Court.

On appeal plaintiff does not address the issue before the court in his brief but merely concedes awarding a monetary judgment for unpaid medical expenses was not proper and the brief alleges that the appeal of the case is frivolous as counsel agreed to modify the judgment conforming it to the relief sought by the appeal and that this occurred several months prior to the filing of the brief. Defendant has made no response to this allegation.

Apparently this concession has caused the parties to waive oral argument and submit the case on briefs alone. Thus, the issue still prevails and awaits our disposition since an agreed order has not removed the case from the appellate docket.

Since the issue is not now contested, we do not find it necessary to fully review and discuss the facts of the cases cited by defendant. Although the *Staggs* case, *supra*, and the *West Insurance Company* case, *supra*, both involved the computation of interest on awards, the courts did rule generally that an employee is not entitled to personally receive payment for medical expenses unless he or she has personally paid the medical expenses and is due reimbursement. The holding in the *Moody* case, *supra*, notes that T.C.A. § 50-6-122(b) generally provides that a health care provider shall not pursue a private claim against a workers' compensation claimant for all or any of the costs of the health care provider except under certain circumstances which we find do not have application to the present case.

We also find that T.C.A. § 50-6-204 generally provides that an employer shall furnish free medical treatment to an injured employee.

Thus, we find the statutory scheme is evidence of legislative intent to furnish free health care services to an employee injured while working and to relieve the employee of the responsibility of paying for authorized medical treatment and also to relieve the employee of receiving funds belonging to a medical care provider. However, the cases cited herein do recognize an employee is entitled to be reimbursed under circumstances where the employee has actually paid medical expenses for which the employer would be liable under the Workers' Compensation Act.

For these reasons, we reverse the ruling of the trial court and modify the judgment to direct defendant employer to pay the medical expenses in question.

As to plaintiff's request for a finding that the appeal was frivolous, we believe that the assertion in the brief that plaintiff agreed to the relief sought by the appeal several months prior to the filing of the brief cannot be treated as competent evidence of this fact. Therefore, we are of the opinion the case should be remanded

to the trial court in order to conduct a proper hearing on this issue and to impose an appropriate sanction upon finding the appeal is frivolous.

The judgment is reversed and the case is remanded to the trial court for further proceedings as indicated herein. Costs of the appeal are taxed to defendant employer.

Roger E. Thayer, Special Judge

CONCUR:

E. Riley Anderson, Chief Justice

John S. McLellan, III, Special Judge

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AT KNOXVILLE

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WILLIAM W. WALDEN,) BRADLEY CHANCERY
) No. 97-028
Plaintiff-Appellee,)
)
) No. 03S01-9709-CH-00115
v.)
)
) Hon. Earl H. Henley,
NEW LIFE MINISTRIES a/ba) Chancellor
NEW LIFE MATERNITY HOME)
)
Defendant-Appellant.)

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the defendant/appellant, New Life Ministries, for which execution may issue if necessary.

12/02/98